

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Revision of the Commission's Rules to Ensure )  
Compatibility with Enhanced 911 Emergency )  
Calling Systems )  
)  
Northern New Mexico Telecom, Inc. )  
Petition for Waiver of Sections 20.18(e) )  
of the Commission's Rules )

CC Docket No. 94-102

**To: Chief, Wireless Telecommunications Bureau**

**PETITION FOR WAIVER**

Northern New Mexico Telecom, Inc. ("Northern New Mexico"), pursuant to Section 1.3 and 1.925 of the Commission's Rules,<sup>1</sup> hereby requests waiver of the Phase II enhanced 911 ("E911") obligations set forth in Section 20.18 of the Commission's Rules.<sup>2</sup> Waiver is warranted due to the fact that the underlying purpose of the Rule would be frustrated by application to Northern New Mexico and grant of the waiver would be in the public interest. To further the public interest, Northern New Mexico proposes a specific deployment schedule based upon representations made by handset-based solution vendors.

**I. Background**

Northern New Mexico will initiate service this week. Accordingly, it was not required to file a request for waiver of the FCC's Phase II E911 requirements by the Commission's November 30, 2001 extended deadline for small and rural carriers. Northern New Mexico's PCS

<sup>1</sup> 47 C.F.R. §§ 1.3 and 1.925. A facsimile copy of the Declaration by an authorized company representative attesting to the accuracy of this waiver request is attached. A supplemental filing will be made after the original has been received.

<sup>2</sup> 47 C.F.R. § 20.18.

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licenses cover the counties of Mora and Colfax in New Mexico (BTA008 submarkets 6 and 8).<sup>3</sup> Northern New Mexico utilizes San Isabel Telecom, Inc.'s ("San Isabel's") Lucent CDMA switch<sup>4</sup> and has just begun to initiate service.

## **II. Waiver is Warranted**

The standard for grant of a waiver of the Commission's Rules is that "the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest."<sup>5</sup> Northern New Mexico's waiver request meets these standards.

### **A. The Underlying Purpose of the Commission's E911 Rule Would be Frustrated by Application to the Instant Case**

The Commission's Rules require broadband PCS licenses to provide E911 access to their customers using either a handset-based or network-based solution. Licensees who implement a network-based solution must provide E911 access to their customers within six months of receiving a valid PSAP request.<sup>6</sup> Licensees who implement a handset-based solution must meet the following implementation schedule: October 1, 2001 - Carriers must begin selling and activating ALI-capable handsets; December 31, 2001 - Carriers must ensure that at least 25% of all new handsets activated are ALI-capable; June 30, 2002 - Carriers must ensure that at least 50% of all new handsets activated are ALI-capable; December 31, 2002 - Carriers must ensure

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<sup>3</sup> Call Signs WPQT378 and WPQS926.

<sup>4</sup> San Isabel filed a petition requesting waiver of the Phase II E911 obligations on October 1, 2001.

<sup>5</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>6</sup> A PSAP request is "valid" if the PSAP is capable of receiving and utilizing the data elements contained in a 911 call and the PSAP has a mechanism in place for recovering the costs of administering 911 calls. See 47 C.F.R. § 20.18(j).

that at least 100% of all new digital handsets activated are ALI-capable. By December 31, 2005, carriers must reach 95% penetration of ALI-capable handsets in their total subscriber bases. San Isabel has chosen a handset-based solution. Therefore, Northern New Mexico must also implement a handset-based solution.

To require Northern New Mexico to be compliant with the FCC's E911 rules upon initiation of service would frustrate the underlying purpose of the FCC's E911 Rules by jeopardizing the provision of service through imposition of financially burdensome and technically infeasible requirements in addition to possibly causing harm to the public. The FCC adopted its E911 Rules with the goal of "stimulat[ing] the application of wireless technology to improv[e] emergency 911 systems."<sup>7</sup> The Commission recognized that this goal could not be accomplished without "research, testing and development requiring coordinated efforts by public safety organizations, wireless carriers, location technology vendors and equipment manufacturers."<sup>8</sup> Due to concerns expressed by the carriers, vendors, and manufacturers regarding the technical and financial feasibility of implementing E911 services, the FCC adopted a phased-in approach that is "rigorous without being impossible or commercially self-defeating."<sup>9</sup> Further, the Commission provided for waivers of its Rule in situations in which it is

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<sup>7</sup> *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 (2000) ("Fourth MO&O").

<sup>8</sup> *Id.*

<sup>9</sup> *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18707 (1996) ("R&O"). See *Notice of Proposed Rulemaking* 9 FCC Rcd 6170, 6178 (1994) (FCC proposed a phased-in approach due to concerns about "technical and financial feasibility expressed by manufacturers and communications service providers").

not economically or technologically feasible for a carrier to meet the phased-in deployment timetable.<sup>10</sup>

**1. Imposition of a Network-Based E911 Phase II Solution is Not Technically or Financially Feasible for Northern New Mexico**

To date, Northern New Mexico has not received a Phase II request from a PSAP that is capable of receiving and utilizing the data elements and has a mechanism in place for recovering the PSAP's costs. Accordingly, Northern New Mexico is not currently required to provide a network-based Phase II E911 solution. However, because handset-based technologies are not currently available for CDMA systems, Northern New Mexico, in conjunction with San Isabel, has investigated utilizing a network-based solution in the event a request is made.

This investigation has revealed that network-based solutions are not technically and financially feasible. Without the ability to spread the high costs of a network-based solution over a large subscriber base, the cost of deploying a network-based solution would in any event, be prohibitively expensive.<sup>11</sup>

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<sup>10</sup> See, e.g., R&O at 18718 (noting that there may be exceptional circumstances where deployment of E911 may not be technically or economically feasible within the timetable allowed and stating that these cases can be dealt with through individual waivers); *U.S. Cellular, et.al. v. FCC*, Case No. 00-1072, D.C. Cir., FCC Brief at 33 ("If a small or rural carrier can show that, in fact, it is uniquely disadvantaged by the technological or economic demands imposed on it by the FCC's E911 implementation schedule, the waiver procedure is available for it to seek appropriate individualized relief").

<sup>11</sup> Northern New Mexico has been informed by Grayson Wireless that its network-based solution costs \$20,000 per cell site and must have the visibility of two sites in order to operate. Northern New Mexico currently has only one site operational. Accordingly, Grayson's solution is not technically feasible. Cell-Loc, Inc. quoted \$33,000 per site for omni and \$45,000 per site for a three sector cell site plus \$50,000 for a host computer and server and \$1.00 per subscriber per year. These costs are prohibitively expensive for Northern New Mexico, a start-up company that will primarily provide service to roamers.

**2. Imposition of the Commission's Implementation Schedule for a Handset-Based Solution is Not Technically Feasible for Northern New Mexico**

To require Northern New Mexico to sell ALI-capable handsets to new customers according to the FCC's timetable would frustrate the FCC's goal that the imposition of E911 requirements be technically feasible. Northern New Mexico plans to provide service only to roamers for at least the first six months of operation due to the very rural nature of its service area. Additionally, Northern New Mexico has not been able to identify any location technology vendors or equipment manufacturers that currently produce ALI-capable phones for CDMA systems. Accordingly, Northern New Mexico cannot meet the FCC's handset-based implementation schedule.

According to Northern New Mexico's investigation, none of the major handset manufacturers will have GPS-capable handsets available for commercial availability until sometime in 2002 and other handset-solution vendors do not meet the FCC's accuracy requirements or are too costly.<sup>12</sup> Samsung has indicated that it will manufacture GPS-capable handsets in the near future; however, it requires a minimum order of 5000, an amount far in excess of the amount needed were Northern New Mexico to begin selling local wireless service.

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<sup>12</sup> See Alltel Communications Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules filed July 25, 2001 at 17 ("Alltel's Waiver Request") at 14. Northern New Mexico has been informed by Airbiquity that its handset solution costs \$130.00 per handset. This cost is prohibitively expensive, especially for a new carrier who would not be able to compete if it were to price its handsets significantly higher than its competitors or cover the cost of such a handset solution from its very limited financial resources. Additionally, it is not clear from information provided by Airbiquity when and if the solution meets the FCC's accuracy requirements.

**B. Grant of This Waiver Request Would be in the Public Interest**

Northern New Mexico is not requesting a blanket waiver of the Commission's E911 Phase II requirements, but rather requests a waiver only to the extent that these requirements cannot be accomplished in a technically or economically feasible way. Accordingly, Northern New Mexico seeks an extension of the deadline to allow it to implement a handset solution in the most efficient and expeditious manner.

Based upon Northern New Mexico's investigation and the representations made by manufacturers in Alltel's Waiver Request, Northern New Mexico seeks a waiver for a fifteen-month deferral of each of the penetration benchmarks in Section 20.18(g)(1)(i)-(iv).<sup>13</sup> Specifically, Northern New Mexico proposes to begin selling and activating ALI-capable handsets by January 1, 2003; ensure that at least 25% of all new handsets activated are ALI-capable by March 31, 2003; ensure that at least 50% of all new handsets activated are ALI-capable by September 30, 2003; and ensure that 100% of all new digital handsets activated are ALI-capable by March 31, 2004. Northern New Mexico does not seek relief from the requirement that by December 31, 2005, carriers must reach 95% penetration of ALI-capable handsets in their total subscriber bases. Such an extension would allow time for manufacturers to complete development and fully test handset solutions for CDMA systems. To begin selling and activating the phones on a shorter timetable would be a disservice to the public interest as phones that had not been properly tested would be sold to consumers as soon as the manufacturers make them available in order to meet Commission-imposed deadlines. These phones could cause harm if a consumer relied on the phone to call 911 in an emergency and

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<sup>13</sup> See, e.g., Alltel's Waiver Request at 22.

emergency personnel were unable to expeditiously locate the customer because the phones were defective.


### **III. Conclusion**

Because implementation of the FCC's E911 Phase II implementation requirements are neither technically nor financially feasible, Northern New Mexico requests a waiver of the requirements. The requested waiver would allow for a fifteen-month deferral of each of the penetration benchmarks required for carriers that choose handset-based solutions. Such a wavier would be in the public interest as it would allow time for manufacturers of CDMA handsets to fully develop the solutions and test the phones before they are sold to Northern New Mexico subscribers.

Respectfully submitted,

**NORTHERN NEW MEXICO TELECOM, INC.**

By:

  
Tamber Ray  
John Kuykendall

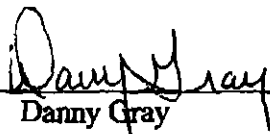
Its Attorneys

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January 17, 2002

**DECLARATION OF DANNY GRAY**

I, Danny Gray, General Manager of Northern New Mexico Telecom, Inc., do hereby declare under penalty of perjury that I have read the foregoing Petition for Waiver and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.

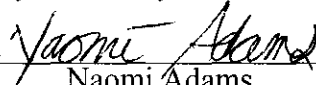
  
\_\_\_\_\_  
Danny Gray

Dated: January 16, 2002



**CERTIFICATE OF SERVICE**

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition For Waiver" for Northern New Mexico Telecom, Inc. was served on this 17<sup>th</sup> day of January 2002, via hand delivery to the following parties:

  
\_\_\_\_\_  
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